IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1153 OF 2006

Mr. Jitendra Brahmdutt Singh Thakur ....Petitioner.

V/s

The State of Maharasthra ....Respondent.

Mr. A.P. Mundargi i/b Bipin Joshi for the petitioner.
Ms. Rajeshree M. Gadhvi, APP for the State.

ALONG WITH

CRIMINAL APPLICATION NO. 1154 OF 2006

Dilip Jitendra Singh Thakur ....Petitioner.

V/s

The State of Maharashtra ....Respondent.

Mr. A.P. Mundargi i/b Bipin Joshi for the petitioner.
Ms. Rajeshree M. Gadhvi, APP for the State.

CORAM: V.M. KANADE, J.
DATE: 21st March, 2006

P.C.:

1. Heard the learned Counsel for the petitioner and the learned APP for the State.

2. Both these applications can be disposed of by a common order since the applications for anticipatory bail have been filed in respect of C.R. No. 58 of 2006 registered at Tilak Nagar Police Station for the offence punishable under section 342 read with section 34 of the Indian Penal Code and section 6 of the

Immoral Traffic (Prevention) Act, 1956.

3. It is alleged that reliable information was received by Shri Gaikwad, Inspector of Police, Social Security Branch that the business of prostitution was being carried on in Hotel Natraj Bar & Restaurant and the girls were wrongfully confined in the said hotel. Accordingly, police raided the said hotel at 1.30 a.m. on 3/3/2006. In the course of the raid, 14 customers, 24 employees of the hotel were arrested and, on further inquiry, they found that 19 girls out of which two were minor, were detained in room No.11. The statements of the girl were recorded. The petitioner in Criminal Application No.1153 of 2006 is the owner of the Restaurant and the petitioner in Criminal Application No. 1153 of 2006 is the son of Jitendra Brahmdutt Singh Thakur the petitioner in the earlier application.

4. It is submitted by the learned Counsel appearing on behalf of the petitioner that the petitioner who is the owner of the hotel has a licence under the Shops and Establishments Act and Bombay Police Act whereby he has been authorised to keep the Restaurant open till 1.30 a.m. He is also granted licence to carry on dance and orchestra. It is submitted that the owner

of the Restaurant was operated on 1/3/2006 and was in the hospital when the raid had taken place and the petitioner's brother and the other employees were arrested and released on bail. He invited my attention to the order passed by the learned Magistrate. He submitted that the Magistrate had recorded the statements of all the women and had observed that none of the women had stated that they were detained without their consent or that they were forced into prostitution business. He submitted that the provisions of the PITA were not attracted since there was no evidence that the prostitution business was being carried out. He invited my attention to the remand application which was filed by the police in which it has been stated that there was a hall where musical instruments were kept. He submitted that the word "customer" which has been used in the remand application indicates that it was not used in the sense of "customer" as envisaged under PITA. He submitted that, therefore, this is a fit case for grant of anticipatory bail.

5. The learned APP appearing on behalf of the State vehemently opposed these applications for grant of anticipatory bail. The learned APP invited my attention to the provisions of PITA. She submitted

that the question of grant of consent was immaterial whereas it was established that the girls were detained for the purpose of carrying on the prostitution business. She also invited my attention to the statements of the victim girls and all of them have stated that they were told to put on their clothes as they were likely to meet the customers. It is submitted that this itself indicated that the prostitution business was being carried on in the premises. The learned APP also invited my attention to the antecedents of the present petitioner. She submitted that various offences were registered against them in the past under the provisions of 294 IPC and the provisions of section 33(w) of the Bombay Police Act. The learned Counsel appearing on behalf of the applicant, at this stage, submitted there is no offence registered under the provisions of PITA either against the petitioner or any of the employees of the hotel.

6. I have given my anxious consideration to the submissions made by the counsel appearing on behalf of the petitioner and the learned APP appearing for the State. In the present case, the petitioner Dilip Thakur had a valid licence of carrying on orchestra in the premises till 1.30 a.m. The customers were

arrested while sitting in a hall where the musical instruments were kept. The Magistrate has, in his order, mentioned that none of the girls has stated that they were kept without their consent. There is no prima facie evidence to indicate that the premises were being used as brothel as defined under PITA. Prima facie, therefore, the provisions of section 6 of the PITA are not attracted. It is possible that the petitioner may have committed breach of the ban which is imposed by the Government of Maharashtra for running dance bar. The said offence is a bailable offence. The girls who were found in the room have not stated that they were detained for the purpose of carrying on the prostitution business. The other accused were arrested and released on 14/3/2006. In my view, therefore, custodial interrogation of the petitioner is not necessary since prima facie case under section 6 of PITA is not made out.

7. Further, this is not a case where the raid was conducted after the dummy customer was sent to the hotel. Apart from that, the learned Magistrate had personally interviewed all the girls who were arrested and ascertained that they were not detained against their wish and that they were not carrying on prostitution business.

8. The petitioners, in these circumstances, in the event of the their arrest in respect of the C.R. No. 58 of 2006 registered with Tilak Nagar Police Station for the offence punishable under section 342 read with section 34 of the Indian Penal Code and section 6 of the Immoral Traffic (Prevention) Act, 1956, be released on bail in the sum of Rs 25,000/- each with one or two sureties in the like amount. The petitioners to repot to the Tilak Nagar Police Station for one week from 24/3/2006 between 11.00 a.m. and 5.00 P.M.

9. Both the above applications are accordingly disposed of.

V.M. KANADE, J.